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WIDOW'S RENUNCIATION AND ACCELERATION OF DISTRIBUTION.

The right of renunciation is, perhaps, given the widow of a testator in all jurisdictions. It is a right as clear and absolute as her right would have been in the estate of the testator, had he died intestate—neither can be taken away by his testamentary act. Code, § 2559, provides, "she may, within one year from the time of the admission of the will to probate, renounce such provision. * * * If such renunciation be made, or if no provision for her be made in the will, she shall have such share of her husband's personal estate as she would have had if he had died intestate; otherwise, she shall have no more thereof than is given her by will." While the above seems to be limited to "personal estate" there is no doubt, in view of her status, after her act of renunciation, that her dower rights are preserved and remain intact unimpaired thereby. Every testator is presumed to know, when he executes his will, that the right of his widow to renounce its provisions exists and is secured to her, and that such right is paramount to his testamentary act.

When the widow exercises the right to renounce, the whole scheme of disposition of the estate embodied in the will is not destroyed. It is disarranged only pro tanto. There is no presumption that he would have made any specific difference in the distribution of his estate had he known she would exercise her right. Estates are frequently bequeathed for the use of the widow for life or until her marriage. When she renounces the provisions of the will made in her favor, it becomes a matter of importance to determine her status with respect to the estate, and how the other provisions of the will apply thereto. This has been the subject of consideration by the Courts of several jurisdictions.

In Randall *v.* Randall, 37 Atlantic Rep. 209 (Md.), the Court states the effect of the act of renunciation to be as follows: "The

rule followed by both the English and American Courts is that a widow's renunciation and election to take as against the will is equivalent to her death, unless it contravenes some manifest intention of the testator as expressed by the will," and quotes with approval from Boyd *v.* Sachs, 78 Md. 497, what was therein held, to-wit: "The widow's marriage was to have the same effect upon all the interests devised and bequeathed by the will as would have been wrought by her death." In re Schultz's Estate, 71 N. W. 1079, Mich., the Court states the rule to be "the life estate in the widow was as effectually terminated by her election as it could be by her death."

Wood *v.* Wood, 1 Metc., Ky., 512: Held the ulterior devises took effect upon the widow's renunciation of the will, as they would have done by her death. The estate is to be disposed of, under the provisions of the will, as if she were dead. In re Furgeson's Estate, 138 Pa. St. 208. Held, "bequests subordinate to a life estate in the testator's widow or payment of which is postponed until her death by the terms of the will, become presently payable upon her election to take under the intestate laws, and such election is equivalent to the widow's death."

Underhill on the Law of Wills, page 1048: "In case the widow elects to take under the law and to relinquish the gift which the will gives her, the will, so far as the provision which was made for her is concerned, is void." Text writers, and the courts, seem to be in unanimous accord that the renunciation of the widow is equivalent to her death or marriage; that the provisions of the testator's will are absolutely void as to her, and in determining her rights it is to be as completely ignored as though it was never executed, and the estate, as to her, is to be administered and disposed of as though the testator had died intestate.

Pittman *v.* Pittman, 81 Kans. 643: "The renunciation, however, of the widow of the provisions of the will and her election to take under the law does not render the will inoperative further than as between herself and those entitled to the residue of the estate; as between other persons it will be enforced as nearly in accordance with the intention of the testator as it can be."

Our Court, Mitchells *v.* Johnsons, 6 Leigh 474, holds, "in all other respects it ought to be executed, as nearly as possible according to the wishes and intentions of the testator. The prop-

erty renounced by the widow should be subject, in the first place, as far as necessary, to the indemnification of those legatees or devisees whose devises or legacies may have been impaired or lessened by the effect of the renunciation of the widow." However, in many cases, estates are bequeathed, either to the widow or in trust for her, for her use and benefit, during life or until her marriage, and then in remainder to specified objects of the testator's bounty, and frequently with the words, "in default of issue" with a limitation over to other objects.

As renunciation is equivalent to death or marriage, the objects and purposes for which the estate is to be kept together or held in trust, to-wit, the use and benefit of the widow for life or until marriage, have failed. By her act, the first or primary bequest of the testator is as though it had never been made.

The intention of the testator is to control, and that intention is, when the primary bequest is out of the way, the secondary bequest or devise in remainder shall take effect and become operative at once, unless there is a clear expression of testamentary intent to the contrary. Acceleration of distribution is caused by the renunciation of the Widow.

Underhill on the Law of Wills, page 1334, devotes § 878 to "The Acceleration of Future Estates," arising from various causes therein specified, and it is an exceedingly interesting statement of the law, and shows that acceleration may arise from the happening of a great variety of events.

It was held, Slocum *v.* Hagaman, 52 N. E. Rep. 332, "that, by the weight of authorities, where the widow, who has been given a life estate under the will, renounces and elects to take her statutory rights, her renunciation works an extinguishment of her life estate, and accelerates the rights of the second taker." Citing Fox *v.* Rumery, 68 Me. 121; Dean *v.* Hart, 62 Ala. 310, 20 A. & E. Enc. L. 895-897. The doctrine of acceleration proceeds upon the supposition that, though the ulterior devise is in terms not to take effect in possession until the decease of the prior devisee, a tenant for life, yet, that, in point of fact it is to be read as a limitation of a remainder to take effect in every event which removes the prior estate out of the way.

First Jarman on Wills, 539; Blatchford *v.* Newberry, 99 Ill. 11: "Whether the life estate is determined by revocation or by

death, or by renunciation of the widow, or by any other circumstance, which puts the life estate out of the way, the remainder takes effect, having only been postponed in order that the life estate might be given to the life tenant. We held that the doctrine was founded upon the presumed intention of the testator that the remainderman should take on the failure of the previous estate, notwithstanding the prior donee be still alive; that the doctrine was to be applied in promotion of the presumed intention of the testator, and not for the purposes of defeating his intention. Where the intention of the testator is that the remainder should not take effect until after the expiration of the life of the prior donee, the remainder will not be accelerated." Where, however, the chief care of the testator is to keep his estate in such condition that the income should be derived therefrom for the benefit of his wife during her life, or until her marriage, then there is no intention to prevent acceleration of distribution. When it could no longer be paid to her, it was not necessary to postpone the vesting in possession of the remainders until the expiration of her life estate.

In re Vance's Estate, 21 Atl. Rep. 643 (Pa.): The bequest of the personal property was to the wife for life, and, at her death, certain specific legacies should be paid and the residue should go to certain relatives. The wife renounced the will and took one-half the personal property absolutely. It was held that the specific legacies were thereupon payable in full at once, the wife's renunciation being equivalent to her death. Speaking of the rights of the residuary legatees, the court uses this language, "from their very definition, they come in last, and the testator, with knowledge of this fact, declares that they shall get nothing until after all others are paid in full. Mere diminution of the amounts coming to the residuaries does not in any way justify interference in the regular and established order of priority. When therefore, it is said, as in Sandoe's Appeal, 65 Pa. St. 314, that equity will sequester the benefit intended for the wife to secure provision for those who are disappointed by her action, the disappointment to be understood is the failure of the testator's intent in regard to other beneficiaries. These will be protected, not for their own sakes, but, of necessity, in order to preserve the wishes of the testator, and such necessity does not extend to

the interference with any beneficiaries prior in rank for the sake of the residuaries. One of the chances the latter take, from the nature of their position, is that the share coming to them may undergo changes in amount before the period of distribution. There is no force in the argument that the general pecuniary legatees have no cause of complaint at being postponed until the death of the widow, as their legacies, by the terms of the will, are not payable until that event; for neither are the residuary legacies. The advancement of the time of payment is the legal consequence of the termination of the purpose of the postponement, and both the definite and the residuary legacies share this advantage in common. To postpone the definite legatees, and transfer the income of their legacies to the residuaries during the widow's life, is not in furtherance of any direction of the will, but in direct violation of the testator's intent that the definite legacies should be paid in full before the residuaries get anything. As said in Furgeson's estate, supra, the law must have a settled and uniform rule, and it is that as to provisions in a will for legacies subordinate to a life interest in the widow, and contingent upon her death, or payment of which is postponed till then, her election to take against the will is equivalent to her death. By such election the widow takes her share as if the husband had died intestate, and the will then operates on the rest of the estate precisely as if the widow were dead. A court of equity will interpose, if necessity requires, to preserve the intention of the testator from destruction, but such interposition never should take place in favor of a subordinate, as against a preferred or superior intent, and, therefore, never in favor of a residuary as against a definite legatee, unless upon a plain implication in the will that the residuary legatee was in fact a preferred object of the testator's bounty."

Wood *v.* Wood, 1 Metc., Ky., 512: An estate was devised to the widow for life, after her death a specified sum was to be set apart for the use of others, and then the residuary estate was devised to different parties subject to certain limitations. "The residuary devisee is not injured by allowing the bequest to Alexander White and his wife to take effect before the designation in the will. After their death the money, the profits of which belong to them during their lives, goes under the will to their son,

James White, and not to the residuary devisee. And as James White is not entitled to it until their death, his interest therein is not affected by their enjoyment of the profits before the death of the testator's widow. Looking to all the provisions of the will and considering the effect produced by the act of renunciation upon the rights and interests of all the devisees, we have come to the conclusion that the general rule by which the interest in remainder takes effect, whenever the prior devise ceases or fails, should be allowed to prevail in this case. In consequence of the renunciation by the widow, the intention of the testator cannot be carried into complete effect. But this object will be more nearly attained, and the rights of the beneficiaries under the will more fully respected, by the adoption of this general rule, than by that of any other which could be applied in such a case."

Armstrong *v.* Parks, 9 Humphreys (Tenn.) 194: "Upon the dissent of the widow to her husband's will, all the property devised to her, as well that as to which the legacy is specific as that which is charged with an annuity or burden in her favor, falls back to the estate, freed from the devise or burden, and, if embraced by its terms, passes under the will at once as other portions of the estate, after the widow's dower and distributive share are satisfied."

Brown *v.* Hunt, 12 Heiskel (Tenn.) 404: "A particular estate being devised to the widow with limitation over, and the widow dissenting from the will, held, that thereupon the limitation over took effect at once, except so far as affected by the widow's right to her dower and distributive share. The only question necessary to be determined now is, the correctness of the Chancellor's decree in reference to the property given to the widow which she failed to take, the devise and bequest failing to take effect because of the dissent of the widow to the will. The Chancellor held that upon the determination of this particular estate of the widow by her dissent, the children became entitled to the property except so far as her dower and distributive share in the personalty were concerned, and that it passed to and vested in the surviving sisters of Elizabeth upon her death. In this we think he was correct."

Furgeson Est., 138 Penn. St. 208: "Bequests subordinate to a life estate in the testator's widow or payment of which is post-

poned by the will until her death, become presently payable upon her election to take under the intestate laws. As to its effect upon all claims under the will, such election is equivalent to the widow's death, unless the will manifests a contrary intent."

Many wills are written by persons "inops consilii." Where the scrivener is not skilled and learned in the law, the words used should be taken and understood in accordance with their ordinary acceptation. The intention is often badly expressed and ambiguous. The Court, so far as humanly possible, in determining the intention of the testator, should place itself in relation to the subjects disposed of and the objects of the testator's bounty in the same relation as the testator stood to them when he made the will, and try to ascertain, from the language used, what the testator intended to do. What Professor Graves is quoted as having stated on this subject, 6th Va. Law Reg. 817, well expresses the duty of the Court in this respect. "The Judicial Expositor, therefore, does not sit aloft on the cold height of an ideal perfection, and survey the written words with a severe and critical eye, careless whether the will fails or not; but after a very human fashion, he seats himself in the armchair of the testator, puts on his spectacles, scrutinizes the will 'by the four corners,' reads its words by the light of all the surrounding facts and circumstances, corrects manifest errors, searches diligently for the faintest traces of intention—even receiving, in a proper case, evidence of the testator's extrinsic declarations; and so endeavors to construe the words of the will as the testator used them, bearing ever in mind that great maxim of the law which enjoins kindly, indulgent interpretation, that the will may prevail and not fail, ut res magis valeat quam pereat."

The objects of testator's bounty are generally living or are in existence at his death. The presumption is that testators desire the recipients of their bounty to enjoy it at as early a period as is practicable. The law favors the vesting of estates at the date of testator's death, in the absence of a clear testamentary intent to the contrary, and the courts so hold, and the vesting of them in possession at as early a period as a fair construction of the testamentary instrument will permit. This is as it should be. This has lead the courts to hold that words of survivorship are to be referred to the period of division and enjoyment, unless there is

a special intent to the contrary. See Cripps *v.* Wolcott, 4th Maddock's Chancery, page 11.

The subject of vested and contingent estates is dealt with learnedly in the opinion of the court, Chew *v.* Keller, 13 S. W. Rep. (Mo.), 395, wherein it is stated: "The law favors vested estates, and where there is a doubt as to whether the remainder is vested or contingent, the courts will construe it as a vested estate." The possession will be postponed only to the earliest date possible, consistent with the intention of the testator as expressed. If the widow, by her act of renunciation, accelerates the period of distribution, then the estate may vest in possession forthwith upon her renunciation, and if expressions of "survivorship, or death without issue," are contained in the testamentary instrument, they should be held, as "survivors, or dying without issue" at the earliest date of distribution permissible, considering the fact that the widow has renounced the will.

In other words, words of survivorship and words of limitation over upon death without issue, should, in the absence of a clear intent to the contrary, be held to apply to the period of distribution, which may be accelerated by the renunciation of the widow, and not to the date of her death or marriage, or to survivorship at the death of the second taker, or an indefinite failure of issue, to be determined by the death of the second taker. If the gift of limitation over is a clear substitutional one to take effect and become operative at the death or marriage of the widow, this would not be true, but unless there is a clear expression of intent to fix it at the death or marriage of the widow, then renunciation accelerates as above stated.

This is fully considered in the case, supra, of Chew *v.* Keller. This was a large estate, one-half of which was devised to the wife for her life, "and the other half to certain devisees, absolutely, as tenants in common, but the devisees were not to take possession of their parts until the death of the wife and upon her death they were to take the parts devised to them * * * and in case either of them should die before the wife, then the heirs of such person, so dying, should take his or her portion, so devised. Held the devisees took a remainder in fee free from any condition, and in the event of the death of one of them before the wife, his heirs took his portion by descent and not as

purchasers." One of the parties became bankrupt, and died without leaving issue, before the death of the widow, and his share of the estate was sold by the assignee in bankruptcy. The issue claimed his share as purchasers under the will and their claim was denied by the court. The court, in its opinion, subscribes to the holding of our court in the case of Gaskins *v.* Hunton, 92 Va. 528, 23 S. E. 885, to-wit: "If an estate is conveyed, or interest is given, or a benefit bestowed in one part of the instrument by clear, unambiguous, and explicit words, such estate, interest or benefit is not diminished or destroyed by words in another part of the instrument unless the terms which diminish or destroy the estate before given be as clear and decisive as the terms by which it was created." This would apply to the right of the vesting of the estate in possession, at a specific time or upon the happening of a specific event.

In Chew *v.* Keller, supra, the language is: "Again, an estate in fee created by a will cannot be cut down or limited by a subsequent clause, unless it is as clear and decisive as the language of the clause which devises the real estate."

In re Schultz's Estate, 71 N. W. Rept. (Mich.) 1079: Real estate was devised to the wife for life with remainder over. "It contained a clause providing that, on the death of a legatee before his wife's decease, the heirs of such legatee should take the legacy bequeathed to him. Held, that, on the election of the wife to take under the law, the residue of the estate, after the payment of debts and the widow's portion, should be distributed at once to the legatee."

Petty *v.* Moore, 5 Snead 126: The entire estate was given to the wife during her life, the remainder to the eleven children. The codicil provided that in the event of either of said children dying without an heir of his or her body, that all of his or her share should return to his estate and be equally divided amongst those that may be living. Held: "The effect of the codicil was to give a present vested interest, with an executory devise over, and upon the happening of the contingency named, and that upon the death, pending the life estate, of one of the children leaving no children, his share would be subject to pass in the ordinary course of descent, * * * and upon the falling in of the life estate would be subject to his creditors."

Williamson *v.* Chamberlin, 10 N. J. Equity 373. A testator made certain devises and bequests to his children and the residue of his estate, real and personal, was devised to his wife for life. After her death, unless the wife choose to give up her estate before her decease, it was to be sold and divided amongst the children. If any of the children should die without lawful issue, then, his or her share or legacy should be equally divided between the survivors, share and share alike. "Held, that he used the term 'survivors' with reference to the period when the estate should be divided after the happening of the event mentioned in his will, to wit: the death of his wife."

Goodwin *v.* McDonald, 153 Mass. 481. A testator devised one-half of his property to his wife and the other half to his son, and provided, "should either said wife or son die, their share to go to the survivor,—should both die the property to go to the nearest kin,—gives a fee to the wife and son, and not a life estate to each, with remainder to the survivor, and in fee to the nearest of kin." "Should either wife or son die their share to go to the survivor" intends a death before the testator. See, also, Drayton *v.* Drayton, 1 Desauseues Equity S. C. 324.

Lumpkin *v.* Lumpkin, 25 L. R. A. 1063 (Md.): Testator gave a portion of his estate to his wife for life, remainder to his children, and he also gave certain portion to each child. The will provided, "in case either child dies without leaving lawful issue, then their portion of my estate shall be equally divided between my wife and my surviving children." Held, this applies to the remainders after the wife's life estate, as well as to portions given them directly, and it means death in the testator's lifetime, so, if a child survives the testator his share became absolute although he died within the lifetime of the life tenant.

Note to the above case 1068. "Where an estate is devised to one for life with remainder to another, with further provision that if remainderman should die without children or issue, then to a third person, the rule is that the words 'dying without children or issue' are restricted to death of the remainderman before the termination of the particular estate. It is a general rule of construction that where there is a bequest of personalty in terms absolute, in remainder after life interest, with alternative bequests in case of the death of legatee, to children of the lega-

tee, or, in default of children then over, such contingency will be construed as limited to the period of the life interest, and unless it occurs during that period the bequest becomes absolute." Citing 60 Pa. 365, 211 Pa. St. 26, 214 Pa. St. 440.

Umstead and Reiff's Appeal, 60 Pa. 365: There was a devise in trust for the wife for life and after her death to be converted into money and divided between the seven children of the testator. If either of the children should die leaving issue, each is to take the share of the parent, and, if any should die without issue, the share of such one to be distributed among the testator's surviving children, and the share of any deceased child, of such as might be deceased. "Held, that a son who survived his mother was entitled to his legacy absolutely, and the contingency of death without issue, specified in the will, and limitation over, will be construed as limited to the period of the life interest, and unless it occurs during that period the bequest will be absolute."

Opinion by Sharpswood, J., who cites Galland *v.* Leonard, 1 Swanst 161, quotes as follows, to wit: "The Master of the Rolls, Sir Thomas Plumer, held that the testator intended only to substitute the children for the mother in the event of the decease of the latter, during the widow's life, and that the daughters who survived the widow became absolutely entitled." To the same effect are Da Costa *v.* Keir, 3 Russell 360, and Home *v.* Pillars, 2 M. Y. & K. 15.

"These cases may be considered as establishing this general rule of construction that, when there is a bequest of personalty in terms absolute in remainder, after a life interest with an alternative bequest, in case of the death of the legatee, to children of the legatee, or in default of children, then over, such contingency will be construed as limited to the period of the life interest, and unless it occurs during that period the bequest becomes absolute." "The avowed aim of every construction," says, Mr. Roper, "being to give effect to the intention of the testator as expressed in or collected from the will, it seems that when a bequest is not immediate but in remainder, with an executory limitation in case of the death of the legatee, these expressions will be applied to the period when the remainder takes

effect in possession, viz: the death of the person taking the preceding interest." McAlpin's Estate, 211 Pa. St. 26.

The will directed, "the trustees to pay the semi-annual income and profits of one-third of his estate to his daughter for life, * * * provided in case all his children shall depart this life, without issue, the part of share in this my last will and testament devised to the said children of my daughter, Mary, shall revert to and be equally divided among my surviving heirs. Held, that after the daughter's death her children took an absolute estate free from the trust. * * * If a bequest be made to a person absolute in the first instance, and it is provided that in the event of death, or death without issue, another legatee or legatees shall be substituted to the share or legacy so given, it shall be construed to mean, death without issue before the testator, if the gift is immediate, or death without issue during the continuance of the prior estate, when the limitation is by way of remainder." Mayer *v.* Walker, 214 Pa. St. 440.

A testator devised a dwelling house to his wife "so long as she remains my widow. In case she marries or of death, it will go to my son or his lawful heirs. If he should die without any lawful heirs then it shall go to my brother's children. The son died without issue, leaving a will in the lifetime of the testator's widow. Held, the children of the testator's brother took the estate. John G. Johnson, Esq., in argument states, where, in Pennsylvania, there is a devise in remainder upon the falling in of a precedent life estate, with contingent remainder over in case of the death of the first remainderman without heirs, or without issue, no indefinite failure of heirs or issue is meant, but only a failure at the expiration of the precedent life estate," and cites Pennsylvania cases in support. It was said in the opinion of the court in the above case: "Where an absolute estate is followed by these words, it is a settled principle of interpretation that they will be understood as referring to death without issue in the lifetime of testator, if the gift is immediate, or during the continuance of the life estate if it is not, and if the donee survives the testator, or the continuance of the intervening estate, his interest becomes absolute and indefeasible. Conversely, if he does not so survive, the limitation over takes effect as a valid executory bequest or devise."

Farmer's Loan and Trust Co., 189 N. Y. 202. "The principal of a fund bequeathed to a trustee, with a direction to pay the income thereof to a designated person for life, and after her death the fund to be paid to C, and in the event of his death 'without leaving issue,' the fund to go to a grand niece, upon the death of the life beneficiary, vests absolutely in C, if he be living at that time, and only in the event of his being dead without issue at such time does the grand niece become entitled to the fund. The rule with reference to the construction of wills is so familiar as to require no citation of authorities. The Courts may supply words, phrases, punctuation and even transpose sentences in order to ascertain and determine the intent of the testator. Ordinarily, in providing a gift over, in case of the death without issue of a legatee, the time of death, unless a different intent appears, will be held to refer to a death occurring during the life time of the testator. But when the disposition of the property which is devised over in case of death is preceded by a prior estate for life or years, then, the general rule is, that the time of death refers to that which occurs during the period of the intervening estate."

Thackston *v.* Watson, 84 Ky. 206. "When an estate is given or devised with remainder over, but in the event the remainderman should die without a child or children then to a third person, the general rule of construction is that the words, 'dying without children or issue' are restricted to the death of the remainderman before the termination of the particular estate, and when an estate is devised to one in fee, but if he die without issue, or without leaving a child or children, then to another, the general rule is that the first devisee takes a defeasible fee, which is subject to be defeated in the event of his death at any period without issue."

Furgeson *v.* Thomason, 87 Ky. 516. "A testator, leaving a widow and several children, devised his entire estate to his wife during her life, but made no provision as to the final disposition of the estate save as follows:

"I give and bequeath to my son Thomas, one thousand dollars more than to any of my other children—and should he die without issue, then his portion to be equally divided among his sur-

viving brothers and sisters and their heirs, if any there be." By a codicil the testator provided, "It is my further will that if any of my children should die without children the estate above devised to them shall be equally divided between my surviving children and the heirs of those that may be dead. Held, subject to the life estate of the mother, each of the children of the testator took his share in fee subject to be defeated only in the event of his death before the termination of the particular estate, and, therefore, upon the death of the mother, the life tenant, the estate of the surviving children became absolute." It was said in the case of Birney *v.* Richardson and Ford, 5 Dana 424: "In such a case, the law will not be inclined to any other conclusion than that the death must be during the particular estate, unless the letter or context of the will plainly shows that the testator intended a death either in his own life time or at any time whenever it might occur."

In the absence of such a disposing intent appearing from the will, it will not be presumed that the testator intended that the property should be distributed to the devisees and that he should enter upon the enjoyment of it, and yet his interest therein be liable to be defeated by his subsequent death however remote. When unexplained words, equivalent to "dying without issue" are used, they will be construed as meaning the death of the distributee after that of the testator, and before the time which may be fixed for distribution. So when an estate is devised with a remainder over, but in the event the remainderman shall die childless, then to a third person, the words relating to survivorship will be restricted to the death of the remainderman before the termination of the particular estate.

Smith *v.* Ballard, 117 Ky. 179. "In that class of cases the rule is recognized to be, when an estate is given or devised with remainder over, but in the event the remainderman should die without a child or children then to a third person, the general rule of construction is that the words, 'dying without children or issue' are restricted to the death of the remaindermen before the termination of the particular estate."

It thus appears from the text writers and the above line of cases, that a distinction is drawn between instruments which

pass an absolute estate to the first taker, with a defeasance and limitation over upon the happening of a specified event, such as "death without issue," and cases where first there is an intervening or primary estate, and, upon its termination, a bequest in remainder with a defeasance and limitation over upon the happening of a specified event, such as "dying without issue." In the latter line of cases the event, such as "dying without issue" will, if consistent with the intent of the testator, be held to be such as occurs during the life of the first taker and before the period of distribution specified and not an indefinite failure of issue. Such a construction is righteous for it permits vested estates to vest in possession absolutely, without defeasance, to become effective at the death of the second taker, which otherwise, in many instances, would be most serious in its consequences and continue as much as fifty years or more. The party entitled to the estate would be required to give bond to have it forthcoming to answer the requirements of the will, and could not consume the corpus however great his necessities without possibly imposing a liability on his surety,—in fact could not lawfully deal with the corpus as his own, remove it from the commonwealth, if he desired, without expensive proceedings in Court authorizing it.

In conclusion it appears:

a. The right of renunciation is a clear statutory one.

b. Every testator is chargeable with the presumption, when he executes his will, that he has knowledge of the existence of such right and the legal consequences of its exercise.

c. Renunciation leaves the other provisions of the will in full force and effect, excepting so far as necessarily modified by such act.

d. Renunciation is equivalent to the death or marriage of the widow, in the construction of the will, so far as distribution of the estate is dependent upon the happening of either event.

e. When the estate is to be kept together for the use and benefit of the widow during her life or widowhood, the purpose for which it was to be kept together having been frustrated and failed by her act, *the period of the distribution of the estate is*

thereby accelerated, to the earliest date distribution could be made, in the event of her death or marriage, either before or after the death of the testator.

f. Such acceleration attaches and applies to estates defeasible or with limitations over upon the happening of specified events, such as "death without issue," and they will be held such as occur before the period of distribution thus accelerated, and not such as occur before the death or marriage of the widow or an indefinite failure of issue.

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